

# **Copyrights in Cyberspace and Digital Rights Management**

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# WIPO Copyright Treaty

- Effective March 6, 2002
- 30 countries are currently signatories, including the US
- Requires signatory countries to take measures to protect against circumvention of digital rights management mechanisms

# Digital Millennium Copyright Act

- Enacted in 1998
- US one of the first countries to enact implementing legislation
- Illegal to circumvent technological measures used to protect copyrighted works
- Illegal to tamper with the integrity of copyright management information

# Digital Millennium Copyright Act-- Remedies

- Civil action: range of equitable and monetary remedies
- Criminal action: if willful and for the purpose of commercial advantage or financial gain
  - Up to \$1 million fine/10 years imprisonment

# Digital Millennium Copyright Act-- Cases (1st Amendment)

- Universal City Studios v. Corley
  - 8 major motion picture studios brought suit against 2600 magazine to block it from publishing the DeCSS software program
  - DeCSS defeats encryption used on DVD movies
  - 1st Amendment arguments were rejected
  - Court of Appeals upheld permanent ban

# Digital Millennium Copyright Act-- Cases (Fair Use)

- United States v. Elcom Ltd. (Sklyarov case)
  - Dept. of Justice prosecutes ElcomSoft for development and use of software program permitting users to convert Adobe's e-books into "pdf" format, circumventing digital access mechanism
  - Federal district court holds DMCA's ban on copyright circumvention tools constitutional
  - Elcomsoft to face criminal charges
  - Raises issue of DMCA's effect on fair use doctrine

# Digital Millennium Copyright Act-- Cases (Fair Use)

- Paramount v. Replay
  - Studios sue Replay and SonicBlue for use of digital video recorders to skip commercials, record programs for later viewing
- Newmark v. Turner
  - Electronic Frontier Foundation asks for declaratory ruling that use of digital recorders does not violate the DMCA

# **Digital Millennium Copyright Act-- Cases (ISP Safe Harbor)**

- Robert Hendrickson v. Ebay, Inc.
  - Ebay was sued for copyright infringement based on materials contained on its site
  - District court affirmed DMCA's safe harbor for ISPs



# Digital Millennium Copyright Act-- Cases (ISP Safe Harbor)

- Ellison v. Robertson
  - Author's work was copied and uploaded onto a USENET newsgroup
  - ISP was sued for direct and vicarious copyright infringement
  - District court affirmed ISP qualified for safe harbor treatment

# **Copyrights in Cyberspace--Cases**

- A&M Records v. Napster
  - Court finds Napster infringes record label copyrights
  - Napster shut down until it can demonstrate sufficient technological protection
- Perfect 10, Inc. v. Cybernet Ventures
  - District court enjoins Cybernet from linking to Perfect 10

# Copyrights in Cyberspace--Cases

- Kelly v. Arriba Soft Corp.
  - Kelly sues Arriba for display of thumbnail images
  - 9th Circuit finds fair use exception applies
  - Inline linking and framing decision

# **Copyrights in Cyberspace-- Legislation**

- Consumer Broadband and Digital Television Promotion Act (Senate/Hollings)
  - Would require computer industry to develop security standards to protect transmission and duplication of digital content
  - Manufacturers and content owners would have one year to agree on technology to enforce and protect copyright
  - Otherwise, FCC would impose standard
  - Any device not implementing standard would be illegal

# **Copyrights in Cyberspace-- Legislation**

- Intellectual Property Protection Act of 2002 (House/Smith)
  - Would prevent and punish counterfeiting and copyright piracy
- Intellectual Property Restoration Act of 2002 (Senate/Leahy)
  - Would restore Federal remedies for ip infringement by States

# **Copyrights in Cyberspace-- Administrative Developments**

- Copyright Office increased royalty fees paid by webcasters broadcasting music over the Internet
- Effective June 20, 2002
- Royalty payments are required by DMCA
- Increase can be appealed to DC Circuit court of appeals

# Digital Rights Management-- Foreign Legislation

- EU Information Society Directive
  - EU attempt to harmonize European copyright laws in preparation for ratification of WIPO's Copyright and Performances and Phonograms treaties
  - Requires member states to ensure access to copyright-protected work for limited "public good" purposes
  - Would be limitation on technological or contractual restrictions on use
  - No European countries have yet enacted laws conforming to the WIPO copyright treaty

# **Copyrights in Cyberspace-- Foreign Legislation**

- China--Recent Amendments
  - China joined WTO last year
  - Software now entitled to full copyright protection
  - Copyright protection also extended to Internet and e-commerce



# **Copyrights in Cyberspace-- Foreign Cases**

- **Hit-Bit Software GmbH v. AOL Bertlesmann Online GmbH**
  - AOL hosted site permitting users to upload and download music files
  - Copyright owners alleged three files infringed their copyrights
  - AOL had no knowledge its subscribers were infringing
  - German court held AOL liable for copyright infringement based on negligence standard and rejected the "no knowledge" defense

# **Copyrights in Cyberspace-- Foreign Cases**

- Newsbooster.com
  - Danish court ordered Internet news service to stop linking to web sites of Danish newspapers.

# **Copyrights in Cyberspace-- Foreign Cases**

- Japan MMO
  - Tokyo court ruled against Napster-like service operating a free music exchange service called File Rogue
- Kazaa Media Desktop in Holland
  - Dutch court found users liable but not the music service

# **Copyrights in Cyberspace-- Foreign Cases**

- Film88.com in Holland
  - MPA asked Dutch authorities to shut down online movie theater subscription service
  - Film88.com operated out of Iran which doesn't recognize foreign copyrights but had servers in Holland
  - Dutch authorities acted quickly to convince local ISP to terminate service

# **Copyrights in Cyberspace and Digital Rights Management**

- US cases testing constitutionality and application of DMCA generally support copyright owners
- Not many foreign cases testing WIPO copyright treaty because few countries have enacted conforming legislation
- Foreign jurisdictions increasingly recognize rights of copyright owners in online use situations